IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1382 of 2015
And
C.M.P.No.15668 of 2023

The Management
Southern Tree Farms Ltd. ... Appellant

Vs.

1.Tmt.Savithri
2.Santhosh Kumar
3.Sajitha

4.The Manager,
M/s.United India Insurance Co.,
Ramchand Square,
Kothagiri,
Nilgiris District. ... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, against the order dated 25.04.2013 passed by the Hon'ble Deputy Labour Commissioner, Coonoor in W.C.No.11 of 2011 under The Employee's Compensation Act, 1923, (received by the appellant on 27.07.2013) seeking to set aside the same.

For Appellant : Mr.C.A.Diwakar
For Respondents : Mr.L.Mouli for R1 to R3
Mr.J.Chandran for R4

J U D G M E N T

The first respondent Management before the Deputy Labour Commissioner, Coonoor, is the appellant herein. This appeal has been filed seeking to set aside the order dated 25.04.2013 passed by the Court of Commissioner for Workmen Compensation/ Deputy Labour Commissioner, Coonoor in W.C.No.11 of 2011 under The Employee's Compensation Act, 1923, (received by the appellant on 27.07.2013).

2.The brief facts of the case is that the husband of the first respondent namely, A.Mani was working in the appellant's Tea Factory as Factory Mechanic. On 22.11.1996 at around 10.30 a.m., when he was working in the tea factory a machine fell down on the back of his body and he sustained serious injuries. He was immediately referred to PSG Hospital, Coimbatore, where he was diagnosed to have 'postero-lateral disc prolase'. He underwent surgery and was discharged on 04.12.1996. After the said treatment, the deceased joined duty on 29.12.1996.

3.Thereafter, since the first respondent's husband was getting regular pain on his back, he got treatment at the estate Hospital and during the month of August, 2004 since his back pain was very serious, he was referred to PSG Hospital, Coimbatore. On 29.04.2006 the first respondent's husband was examined by the PSG Hospital Doctors and they certified that he suffer from Motor Neuron Disease – amyotrophic lateral sclerosis and he was certified as 75% physical disability and the same will increase over the period of time. On 27.12.2006 the first respondent's husband died.

4.Thereafter, respondents 1 to 3, who are the dependants of the deceased A.Mani filed claim petition before the Court of Commissioner for Workmen Compensation at Coonoor, claiming compensation of Rs.6 Lakhs, in which, the appellant filed counter statement stating that the accident took place due to the negligence of the deceased Mani who failed to adhere to the standing instructions of the appellant company during the course of employment and that the appellant has taken policy for all the workers of the company for any accident and the policy number is 170502/D/D/41/01/50/29/95 and if any claim has to be made against the appellant, the United India Insurance Company, Kotagiri is liable.

5.The fourth respondent United India Insurance Company had filed counter statement before the Court of Commissioner for Workmen Compensation contending that the deceased A.Mani died only due to natural causes, due to disease and not due to any injuries sustained by him in the accident on 22.11.1996 and hence, the claimants are not entitled to any compensation.

6.After adjudication, the Court of Commissioner for Workmen Compensation/ Deputy Labour Commissioner, Coonoor fixed a sum of Rs.3,12,940/- + Rs.2,500/- for funeral expenses as compensation and directed the appellant to deposit a sum of Rs.2,34,705/- and directed the fourth respondent Insurance Company to deposit a sum of Rs.80,735/- [Rs.78,235/- + Rs.2,500/- for funeral expenses] before the Court of Commissioner for Workmen Compensation, by way of demand draft, within a period of 30 days and also observed that in default of such deposit, interest at the rate of 12% from the date of the incident till the date of deposit will be recovered. Aggrieved by the same, the appellant Management has filed this appeal.

7.The learned counsel appearing for the appellant submitted that the appellant has taken policy for all the workers of the company for any accident with the fourth respondent and continuously paid the premium amount for all the workers. The Insurance Company did not raise the plea before the Deputy Labour Commissioner that the policy is limited policy.

8.The learned counsel appearing for the appellant further submitted that the accident occurred on 22.11.1996 and the first respondent's husband sustained serious injuries. Thereafter he underwent surgery and was discharged on 04.12.1996 and he joined duty on 29.12.1996. Thereafter, after taking continuous treatment, the first respondent's husband died on 27.12.2006. Hence, the Deputy Labour Commissioner rightly passed the order, but the Deputy Labour Commissioner ought to have directed the Insurance Company to deposit the entire compensation amount however, directed the appellant to deposit a sum of Rs.2,34,705/-, which is not sustainable one. The learned counsel further submitted that as ordered by the Deputy Labour Commissioner, Coonoor, the appellant has deposited the entire amount and pursuant to the order of this Court dated 08.07.2015 made in C.M.A.No.1382 of 2015, the claimants have withdrawn the deposited amount.

9.The learned counsel appearing for the fourth respondent Insurance Company fairly submitted that no such plea was taken by the Insurance Company before the Deputy Labour Commissioner, however, the policy was marked by the Insurance Company as Ex.R1 before the Deputy Labour Commissioner and after perusal of the policy, the Deputy Labour Commissioner arrived at the conclusion and directed the appellant to deposit a sum of Rs.80,735/-, which warrants no interference.

10.Heard the arguments advanced on either side and perused the materials available on record.

11.Admittedly, the first respondent's husband was working in the appellant's Tea Factory as Factory Mechanic. On 22.11.1996 at around 10.30 a.m., when he was working in the tea factory a machine fell down on the back of his body and he sustained serious injuries. He was immediately referred to PSG Hospital, Coimbatore, where he was diagnosed to have 'postero-lateral disc prolase'. He underwent surgery and was discharged on 04.12.1996. After the said treatment, the deceased joined duty on 29.12.1996.

12.Thereafter, since the first respondent's husband was getting regular pain on his back, he got treatment at the estate Hospital and during the month of August, 2004 since his back pain was very serious, he was referred to PSG Hospital, Coimbatore. On 29.04.2006 the first respondent's husband was examined by the PSG Hospital Doctors and they certified that he suffer from Motor Neuron Disease – amyotrophic lateral sclerosis and he was certified as 75% physical disability and the same will increase over the period of time. On 27.12.2006 the first respondent's husband died.

13.Thereafter, respondents 1 to 3, who are the Dependants of the deceased A.Mani filed claim petition before the Court of Commissioner for Workmen Compensation/ Deputy Labour Commissioner, Coonoor, claiming compensation of Rs.6 Lakhs and the Deputy Labour Commissioner vide order dated 25.04.2013 fixed a sum of Rs.3,12,940/- + Rs.2,500/- for funeral expenses as compensation and directed the appellant to deposit a sum of Rs.2,34,705/- and directed the fourth respondent Insurance Company to deposit a sum of Rs.80,735/- [Rs.78,235/- + Rs.2,500/- for funeral expenses] before the Court of Commissioner for Workmen Compensation, by way of demand draft.

14.This Court perused the counter statement filed by the fourth respondent Insurance Company before the Court of Commissioner for Workmen Compensation and it reveals that the Insurance Company has not raised the plea that the policy is a limited policy. This Court also perused the policy and it makes it clear that if any person in service sustain injury in accident or death arrived out of the course of employment. The appellant has taken the policy from 01.01.1996 to 31.12.1996.

15.In the present case, the accident took place on 22.11.1996. The appellant Management has insured with the fourth respondent and has paid the premium regularly. The first respondent's husband died on 27.12.2006. Perusal of the entire policy disclose that the policy was in force at the time of the death of the first respondent's husband. Therefore, the fourth respondent cannot deny the payment of compensation to the deceased family. Whatever claim raised by the Dependants has to be adjudicated properly and the adjudicated amount has to be necessarily paid by the fourth respondent. Hence the impugned order is perverse and warrants interference.

16.This Court holds that the fourth respondent Insurance Company is liable to pay the entire compensation. Since the appellant has deposited the amount of Rs.2,34,705/- as ordered by the Deputy Labour Commissioner, Coonoor and the claimants have withdrawn the said amount, the fourth respondent Insurance Company is directed to pay the amount of Rs.2,34,705/- (Rupees Two Lakhs Thirty Four Thousand Seven Hundred and Five Only) to the appellant, within a period of eight weeks from the date of receipt of a copy of this order along with interest at the rate of 12% per annum from the date of award till the date of realization.

17.The civil miscellaneous appeal is allowed on the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

04.10.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To
1.The Deputy Labour Commissioner,
Coonoor.

M.DHANDAPANI,J.
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